Supreme Court, U.S.
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No. 95-18

In The

Supreme Court of the United States

October Term, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATIONS COMMISSION OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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July 26, 1995

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QUESTION PRESENTED

Will this Court grant the writ of certiorari to review the final decision of the Supreme Court of Georgia in a purely state matter involving nothing more than disciplinary proceedings against an inferior court judge for proven violations of the Georgia Code of Judicial Conduct conducted in full compliance with the published Rules of the Georgia Judicial Qualifications Commission?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

State Disciplinary Agency:

Georgia Judicial Qualifications Commission

Respondent:

Chief Magistrate Linda O'Neal

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STATEMENT OF THE CASE

A. Preliminary Statement

It should be noted that, as of July 24, 1995, Petitioner has not notified Respondent or its counsel of the date of filing and of the docket number of this case in the manner required by Supreme Court Rule 12.1, nor has any such notice been served as required by Rule 29. Counsel for Respondent did receive three (3) copies of the Petition by mail on June 29, 1995 and, by subsequent telephone calls to the office of the Clerk of this Court, ascertained the

information required by the above-cited Rule and is thus in position to timely file this Brief in Opposition.

The Georgia Judicial Qualifications Commission (the "Commission") was created by Constitutional amendment in 1972 and is empowered to conduct investigations and hearings with respect to complaints of misconduct by Georgia judges. The Commission is composed of two (2) judges appointed by the Supreme Court of Georgia; three (3) lawyers, each with at least ten years experience, appointed by the State Bar of Georgia; and two (2) non-lawyers appointed by the Governor. These provisions have been carried forward in successive Constitutions, and a copy of the current provisions, Art. VI, §VII, ¶¶ VI, VII and VIII of the 1983 Georgia Constitution, as amended, is appended at App. 1. The Commission functions under rules promulgated by the Supreme Court of Georgia. The Rules applicable to this proceeding, as amended, are published in Ga. Ct. & Bar Rules, p. 14-1 and are appended at App. 5. Among other things, the Commission may, after investigation and hearing, *recommend* to the Supreme Court of Georgia the removal, discipline or retirement of a judge found to be in violation of the Georgia Code of Judicial Conduct, but the final decision lies with the Supreme Court of Georgia, which may accept, reject or modify any recommendation from the Commission. The Georgia Code of Judicial Conduct is published in the Ga. Ct. & Bar Rules, p. 13-1, and is appended at App. 40.

The grounds upon which a Georgia judge may be disciplined, removed or retired from office, as stated in the Georgia Constitution, include, among others, (i) willful misconduct in office; (ii) willful and persistent failure

to perform duties; and (iii) conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Art. VI, §VII, ¶ VII, 1983 Georgia Constitution. (App. 1).

B. Proceedings Below

Acting pursuant to its Rules and upon receipt of some fifteen (15) complaints from citizens of Peach County, Georgia, expressing concern and, in some instances, outrage over Petitioner's conduct, the Commission conferred privately with Petitioner (to no avail); conducted a full investigation; and ultimately filed Formal Proceedings. The Notice of Formal Proceedings is not reported but is appended at App. 75.

After a two-day evidentiary hearing and review of a 445 page transcript and 174 exhibits, the Commission filed its Findings and Recommendations with the Supreme Court of Georgia. These Findings and Recommendations are not reported, but are appended to the Petition for Writ of Certiorari.[1] Following the denial of Petitioner's Request for Oral Argument, and after consideration of the "Petition and Brief in Objection,"[2] the Supreme Court of Georgia, in a 5 to 1 decision (Chief Justice Hunt not participating), accepted the Findings and Recommendations of the Commission and ordered Petitioner removed from office.[3] Petitioner's Motion for

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[1] Petition for Writ of Certiorari, App. at A12-29.

[2] Petition for Writ of Certiorari, App. at A53-89.

[3] Petition for Writ of Certiorari, App. at A1-7.

Reconsideration[4] was denied by Order dated March 30, 1995. It should be noted that both of Petitioner's pleadings were signed by two (2) duly licensed attorneys, one of whom participated in the representation of Petitioner at the Formal Hearing. More importantly, it was not until the filing of the Motion for Reconsideration that Petitioner first attempted to assert the so-called constitutional issues which are now alleged to be so exceptional and novel as to warrant the grant of this writ by this Court.

C. Applicable Facts

No useful purpose would be served by attempting to detail each and every misstatement, omission and exaggeration contained in Petitioner's Statement of Facts. Suffice it to say that the factual basis upon which the decision is premised is plainly and fully set forth in the Findings and Recommendations of the Commission filed in the Georgia Supreme Court[5]; is supported in every instance by cited transcript references; and was obviously sufficient to convince the Supreme Court of Georgia that the Commission had carried its burden of proving the charges by clear and convincing evidence.[6]

Nevertheless, and in keeping with the admonition contained in Supreme Court Rule 15.1, the Commission is compelled to set forth additional facts relating to Petitioner's alleged claim of inadequate legal counsel at the hearing before the Commission. Rather than recite the

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[4] Petition for Writ of Certiorari, App. at A33-51.

[5] Petition for Writ of Certiorari, App. at A15-23.

[6] Petition for Writ of Certiorari, App. at A3, ¶ 1, A7, FN5.

factual and procedural history which led the Supreme Court of Georgia to deny promptly without opinion Petitioner's Emergency Motion to Continue the scheduled pre-hearing conference, as well as the Formal Hearing (which history is omitted from the instant application), this Court is respectfully referred to the Commission's response to said Motion filed in the Supreme Court of Georgia and appended at App. 79, particularly the letter from the designated Presiding Judge to counsel for Petitioner dated September 20, 1994 appended at App. 101-102. As more fully shown in this pleading, counsel for Petitioner had been granted repeated continuances; was advised at least nine (9) days prior to the Formal Hearing that no further continuance would be granted; and the two attorneys who actually represented Petitioner at the hearing had both been involved in previous proceedings in this matter.

Following Supreme Court denial of the Motion to Continue, Petitioner's counsel attended the pre-hearing conference and gave no indication that further efforts to seek a continuance were anticipated; confirmed a previous stipulation by counsel to use the same documents as those to be offered by the Commission; and was given all the information he sought. A transcript of pertinent portions of the pre-hearing conference is appended at App. 105.

Subsequently, and in response to Petitioner's oral Motion for Continuance at the outset of the Formal Hearing, the Commission offered to continue the hearing on condition that Petitioner take a temporary leave of

absence during the pendency of the requested continuance. Continuing to demonstrate the defiant and confrontational attitude which essentially led to these proceedings, Petitioner rejected this offer and went forward without further protest or objection. An excerpt from the Formal Hearing transcript detailing this ruling and Petitioner's decision to proceed is appended at App. 115.[7]

Viewed in this light, Petitioner's misstatements and omissions become transparent and her claim of inadequate counsel fails.

Additionally, under well-established Georgia law, the grant or denial of a continuance is within the discretion of the trial court, and such decisions will not be interfered with unless it clearly appears that the judge abused his discretion. *Hanson v. Kent*, 263 Ga. 124, 428 SE2d 785 (1993); *McCorquodale v. Stynchcombe*, 239 Ga. 138, 236 SE2d 486 (1977).[8] Petitioner has made no such showing and the mere denial of a Motion to Continue simply

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[7] It also should be noted that yet another experienced attorney who had previously assisted in representing the Petitioner joined the proceeding at this time and actively participated in the hearing until such time as he requested permission to be excused. App. 118.

[8] In *Kent*, a pro se plaintiff requested a continuance in order "to prepare a proper case in this action," 263 Ga. at 124, and in *McCorquodale*, appellant argued that denial of his oral motion for a continuance during his habeas hearing was a violation of his constitutional rights to due process and effective assistance of counsel under the Sixth and Fourteenth Amendments, 239 Ga. at 139.

cannot successfully be converted into a legitimate claim of inadequate counsel.

Simply stated, Petitioner was ably represented at every stage of this proceeding by duly licensed, well-qualified and experienced members of the State Bar of Georgia; the denial of her motion for continuance by both the Supreme Court of Georgia and the Commission was not an abuse of discretion; and her claim of inadequate counsel is untenable and insufficient to warrant the granting of this petition.

SUMMARY OF THE ARGUMENT

The Petition for Writ of Certiorari should be denied because the case involves nothing more than a state disciplinary proceeding conducted under applicable and controlling state procedures and raises no special and important reason to justify United States Supreme Court review.

Further, there is no conflict among the United States Courts of Appeal or the state courts of last resort on the questions presented.

REASONS FOR DENYING THE PETITION

Petitioner asserts three (3) reasons for granting the Writ, the last of which involving the alleged inadequacy of counsel has been discussed hereinabove. (infra pp. 4-7).

Seizing upon language found only in a single dissenting opinion, Petitioner asserts two (2) additional reasons

which are alleged to raise what are called (i) issues of "exceptional legal importance" to judges who express public opinion about social, political or governmental matters and (ii) a "novel issue" of great legal significance for judges who are called before disciplinary bodies on charges of misconduct.

As previously noted, neither of these so-called constitutional issues were raised until the filing of Petitioner's last-ditch Motion for Reconsideration in the Georgia Supreme Court. That Court apparently considered such arguments to be so lacking in merit that said Motion was denied within three (3) days of its filing.

Furthermore, neither of these asserted reasons present a constitutional issue of great importance. Rather, an inferior court judge has been judged guilty of numerous violations of a state code of judicial conduct by a constitutionally created state commission composed of state judges, lawyers and lay persons in a proceeding conducted in full compliance with applicable rules, and that decision has been affirmed and reaffirmed by the highest court of the State of Georgia.

It is thus obvious that this matter involves a state disciplinary commission acting pursuant to state constitutional provisions in a proceeding against a state judge for alleged judicial misconduct. As thus viewed, the constitutional issues belatedly sought to be raised to invoke the jurisdiction of this Court fall far short of those generally required by this Court. Robert L. Stern, et al., *Supreme Court Practice*, §4.12, pp. 185-187.

Finally, and assuming arguendo that the instant petition is sufficient to survive the jurisdictional tests stated

by Justice Brennan, *State Court Decisions and The Supreme Court*, 31 *Penn. Bar Assn. Q.*, 393, 399-400 (1960), the petition nevertheless does not fall within any of the eleven (11) considerations generally considered to be relative to the appropriateness of exercising the discretionary certiorari jurisdiction of this court. Robert L. Stern, et al., *Supreme Court Practice*, §4:25, pp. 208-210.

In sum, the issues sought to be raised simply do not rise to the level of national importance which warrants review by this Court. Rather, the issues are purely local in nature; arise only in extremely isolated cases; and the well-reasoned opinion of the Georgia Supreme Court construing and applying provisions of a Code of Judicial Conduct promulgated by that Court provides ample guidance to other Georgia judges subject to the disciplinary powers of the Georgia Supreme Court.

CONCLUSION

For all these reasons, the Petition for the Writ of Certiorari should be denied.

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